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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

MARCIANO PLATA, et al.,

Plaintiffs,

v.

ARNOLD SCHWARZENEGGER, et al.,

Defendants.

Case No. C01-1351 TEH

RECEIVER'S SUPPLEMENTAL APPLICATION NO. 2 FOR ORDER WAIVING STATE CONTRACTING STATUTES, REGULATIONS AND PROCEDURES, APPROVING RECEIVER'S SUBSTITUTE PROCEDURE FOR BIDDING AND AWARD OF CONTRACTS

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INTRODUCTION

Receiver Robert Sillen ("Receiver") submits this Supplemental Application No. 2 for an order (1) waiving any requirement that the Receiver comply with State statutes, rules, regulations and/or procedures governing the notice, bidding, award and protests with respect to contracts (collectively "State Contracting Procedures") necessary for the retention of consultants to assist in the investigation, analysis, design and implementation of quality improvement programs within the prison medical system for the purpose of eliminating preventable deaths, including specifically a pilot project for preventing deaths from asthma; and, (2) approving substituted notice, bidding and contract award procedures for such projects identical in form to the procedures approved by this Court in its order, dated June 4, 2007, granting Receiver's Master Application for a Waiver of State Contracting Law for certain projects (the "June 4, 2007 Order").

The Receiver makes this application on the grounds that if he were required to comply fully with existing State Contracting Procedures, he would be unreasonably constrained in his ability to accomplish the goals the Court has set for him. In order for the Receiver to fulfill in a timely fashion the charge this Court has given him, the Receiver requires the waiver requested in this application so that he is not hampered by the same bureaucratic procedures that have prevented the State itself from solving the problems of the California prison medical delivery system. Adherence to the streamlined contracting procedures approved by this Court in its June 4, 2007 Order will further the goals of the State Contracting Procedures, but without stalling the Receiver's progress in implementing the changes necessary to provide constitutional medical care.

FACTUAL BACKGROUND

A. Appointment of the Receiver

In the face of the unprecedented and ongoing crisis in the California prison health care system and the apparent inability of the State to address that crisis, on February 14, 2006, this Court appointed the Receiver and gave him a mandate to move forward expeditiously to remedy the deficiencies in the system. The Court vested in the Receiver the duty to control, oversee,

supervise and direct all administrative, personnel, financial, accounting, contractual, legal and other operational functions of the medical delivery component of the California Department of Corrections and Rehabilitation ("CDCR"). In addition to those very broad powers, this Court established a procedure by which the Receiver could request waivers of State laws and contracts when necessary for him to accomplish his work.

> In the event, however, that the Receiver finds that a state law, regulation, contract, or other state action or inaction is clearly preventing the Receiver from developing or implementing a constitutionally adequate medical health care system, or otherwise clearly preventing the Receiver from carrying out his duties as set forth in this Order, and that other alternatives are inadequate, the Receiver shall request the Court to waive the state or contractual requirement that is causing the impediment.

Order Appointing Receiver ("Order"), filed February 14, 2006, p. 5:4-9.

B. Receiver's Master Application for a Waiver of State Contracting Law

On April 17, 2007, the Receiver filed a master application for an order (1) waiving any requirement that the Receiver comply with State Contracting Procedures with respect to the contracts necessary to implement certain projects described therein; and (2) approving substituted notice, bidding and contract award procedures for such projects (the "Master Application"). In that Master Application, the Receiver set out in some detail the complex web of State Contracting Procedures impeding his ability to fulfill his court-ordered mandate to provide constitutional medical care to the State's prisoners, and his proposed process to streamline those procedures to accomplish the goals the Court has set out for him. The Master Application was designed to thoroughly address the legal and factual rationale for waivers of State Contracting Procedures in the context of this receivership, and to permit subsequent follow-up waiver applications (such as this one) without the need to repeat such rationale. Master Application, p. 3:11-15.

C. The June 4, 2007 Order Granting the Master Application

In the June 4, 2007 Order, the Court granted the Receiver's Master Application. In that Order, the Court noted "that absent a waiver, the Receiver would ultimately be constrained by the very burdens that have impeded the State in dealing with the undisputed challenges in the prison health care system. It would be a hollow gesture to appoint a Receiver only to let him to become

entangled in the same bureaucratic quagmire that has thwarted prior efforts to provide constitutional medical care. As such, the Court concludes that the instant application for a waiver has merit." June 4, 2007 Order at p. 4:23-5:2 (citations and quotations omitted).

The Court also approved a streamlined contracting procedure for the Receiver's use in connection with the projects listed in the Master Application. The three alternative bidding processes approved in the June 4, 2007 Order are:

(1) Expedited Formal Bids

The Receiver shall utilize the expedited formal bidding process on all higher cost contracts – i.e., those contracts whose total contract price is estimated to be valued at $750,000 or more. The expedited formal bidding process shall also presumptively apply to contract whose total contract price is estimated to be valued at between $75,000 - $750,000, unless the Receiver determines that urgent circumstances require use of the urgent informal bidding process. June 4, 2007 Order at p. 6:6-11.

Expedited Formal Bidding Procedures

1. The Receiver shall develop and issue a Request for Proposal ("RFP") and will formally solicit at least three bids by posting the RFP on the Receiver's website and publishing the solicitation in a trade publication of general circulation and/or an internet-based public RFP clearinghouse for a period of at least one week (7 calendar days). The Receiver shall notify the parties whenever an RFP is posted on the Receiver's website. The Receiver may, in his discretion, identify and solicit additional bidders. If fewer than three bidders respond to the RFP, the Receiver shall make reasonable, good faith efforts to identify additional bidders and solicit their responses to the RFP.

2. The period for response to the RFP shall be at least 30 days.

3. The Receiver will appoint a 3-person selection committee consisting of persons with relevant experience, none of whom are affiliated with, or otherwise have any conflict with, any bidder or the Receiver (or any member of his staff).

4. Criteria for selection of the successful bidder may, in the reasonable determination of the Receiver, include but not be limited to such factors as cost, reputation of the bidder for responsiveness and timeliness of performance, quality of service or product performance, ability of the bidder to provide innovative methods for service delivery, and other similar factors the Receiver deems relevant.

    a. The Receiver (or, at his direction, the selection committee) may conduct interviews of some or all bidders, answer questions posed by bidders and provide additional information to bidders. For contracts whose total contract price is estimated to be valued at $750,000 or more, the selection committee shall conduct interviews of at least the tope two bidders.

b. The selection committee shall provide a recommendation to the Receiver.

c. The Receiver will retain the discretion to reject the recommendation of the selection committee and award the contract to another bidder deemed more qualified or to no one.

5. The Receiver shall list all bidders in his quarterly progress reports to the Court and identify the successful bidder. If fewer than three bidders responded to the RFP and/or any bidder responded to a direct solicitation by the Receiver, the Receiver will so note that fact in the report.

June 4, 2007 Order at p. 6:13-7:9.

(2) Urgent Informal Bids

The Receiver may use an alternative second process when urgent circumstances require the Receiver to move more quickly than permitted by the expedited formal bidding process, but competitive bidding is still required to the extent possible. The Receiver may utilize the urgent informal bidding process for contracts whose total contract price is estimated to be valued at between $75,000 - $750,000 if he determines that urgent circumstances do not permit sufficient time to utilize the expedited formal bidding process because:

a) the additional delay that would result from utilizing the expedited formal bidding process would substantially risk endangering the health or safety of inmates or staff, or

b) the contract is essential to the "critical path" of a larger project, and the additional delay that would result from utilizing the expedited formal bidding process would significantly interfere with timely or cost-effective completion of the larger project.

The Receiver may also utilize the urgent informal bidding process for any contract whose total contract price is reasonably estimated to be valued at less than $75,000.

June 4, 2007 Order at p. 7:11-25.

Urgent Informal Bidding Process

1. The Receiver will make reasonable, good faith efforts to identify and solicit at least three proposals and will accept additional unsolicited bids that may be submitted.

2. The Receiver may, in his discretion, develop an RFP prior to soliciting bidders, establish a response period with respect to any such RFP and/or establish a selection committee to assist in the selection of the successful bidder.

3. Criteria for selection of the successful bidder, in the reasonable determination of the Receiver or his staff, may include, but will not be limited to, cost, reputation of the contractor for responsiveness and timeliness of performance, quality of product or service, ability of the bidder to provide innovative methods for service delivery, and other similar factors the Receiver deems relevant.

4. The Receiver will retain the discretion to award the contract to any bidder or to no bidder.

5. The Receiver will identify all bidders, including the successful bidder, in his quarterly progress reports to the Court. For contracts whose total contract price is estimated to be between $75,000 - $750,000, the Receiver shall also provide the explanation for his determination that one (or both) of the criteria for using the urgent informal bid process were satisfied. If the Receiver is unable to obtain at least three bidders, he will note that fact in the report.

(3) Sole Source Bidding

Finally, the Receiver may utilize a sole source when he has determined, after reasonable effort under the circumstances, that there is no other reasonably available source. Sole source bidding shall only be used as a last resort. The Receiver shall identify any contract that is sole-sourced in the Receiver's quarterly progress reports to the Court along with an explanation as to the basis for the Receiver's determination that no other sources are reasonably available. June 4, 2007 Order at p. 8:16-23.

D. Description Of The Projects That Are The Subject Of This Supplemental Application.

Quality Improvement Projects, Including Specifically The Asthma Initiative[1]

a. Description of the problem. In 2003, as part of the *Plata* remedial program, the CDCR introduced a nominal chronic care program to address the deficiencies of the sick call model of primary care. Inmates with one of nine conditions were to be enrolled as chronic care patients and seen at regular intervals by qualified providers. The *Plata* remedial program was a failure on many fronts for many reasons, including inadequate medical records, almost non-existent information technology, and a shortage of qualified clinicians and managers.

[1] The facts set forth in this portion of the application are based on the Declaration of Terry Hill, M.D. ("Hill Decl."), filed herewith.

In the Findings of Fact and Conclusions of Law ("FFCL"), dated October 3, 2005, this Court concluded that very significant numbers of preventable deaths occurred in the prisons each year, as many as one every six or seven days. FFCL, pp. 10-13. In his efforts to address these fundamental problems, the Receiver is rapidly deploying healthcare information technology and a sophisticated pharmacy management system, and hiring increasing numbers of qualified clinicians and managers. For example, the Pharmacy and Therapeutics Committee has adopted medication guidelines for acute and chronic asthma based on the National Asthma Education and Prevention Program Expert Panel Report (Update 2002).[2] But the CDCR still lacks a quality improvement infrastructure, clinicians are unfamiliar with process redesign, and episodic care rather than planned care is still the norm. There is still no care coordination or case management program, no decision support, and precious little patient education.

An analysis of all CDCR inmate-patient deaths occurring in 2006 revealed that serious problems still remain. According to that analysis, there were 18 preventable deaths and as many as 48 possibly preventable deaths.[3] The study concluded that asthma accounted for the single highest number of preventable deaths. The analysis goes on to describe the system inadequacies and imperatives for change:

> CDCR medical staff has been working in an environment of care characterized by crowded and poorly equipped clinical areas. The medical record systems are outdated and medical information is difficult to retrieve. The dispensing of prescribed drugs is often delayed, and there is an unreliable system for refilling medications for the treatment of chronic medical diseases such as diabetes, hypertension, asthma and coronary heart disease. The drug profile information is unreliable. Practices in many of the prisons focus on episodic care rather than continuity of care and preventive medicine. The environment does not guarantee patient confidentiality, and the culture does not promote patient advocacy.
>
> The CDCR must create a culture of patient safety, in which clinicians readily identify mistakes and system vulnerabilities and in which all staff share in the responsibility for optimal patient outcomes. Systems should be reviewed or redesigned to support this end.

The analysis concludes with a number of recommendations for quality improvement initiatives,

[2] NIH National Asthma Education and Prevention Program. Expert panel report: guidelines for the diagnosis and management of asthma: update on selected topics 2002. Available at http://www.nhlbi.nih.gov/guidelines/archives/epr-2_upd/index.htm.

[3] California Prison Health Care Receivership Corporation. Prison Medical Care System Reform: Plan of Action. May 2007. See www.cprinc.org/materials.htm.

which the Receiver anticipates implementing in the coming months and years. Because asthma figured so prominently in the deaths studied, the analysis recommended that asthma be the focus of the first full-fledged quality initiative.

b. Description of the Project. The Receiver's Plan of Action[4] draws heavily from work by the Institute of Medicine ("IOM") over the past decade in response to the quality crisis within mainstream American health care. According to the IOM, health care should be safe, effective, patient-centered, timely, efficient, and equitable. The IOM has endorsed adoption of chronic care programs.

The Chronic Care Model[5] includes a number of interlocking components that together encourage high-quality chronic disease management. The Chronic Care Model has been successfully implemented in settings serving uninsured patients, the homeless, migrants, and minority populations, often using the Model for Improvement promulgated by the Institute for Healthcare Improvement.[6]

The Receiver intends to embark on a series of quality improvement ("QI") projects. In keeping with the recommendations of the 2006 inmate death analysis, the first of the QI programs that the Receiver will undertake is an Asthma Initiative. The Asthma Initiative aims to eliminate preventable patient deaths due to undiagnosed or uncontrolled asthma. It will also act as a model for, and provide a testing ground for implementation of, future interdisciplinary QI projects. For example, the Asthma Initiative will engage all six of the organizational change strategies that the IOM considers necessary to improve health care: (a) redesign of care processes based on best practices; (b) use of information technology for clinical information and support for caregivers; (c) increasing and deepening clinical knowledge and skills; (d) development of a team-based, rather than a physician-centric, delivery system; (e) coordination of care; and (f) incorporation of performance and outcome measurements for improvement and accountability. In addition, the Asthma Initiative will demonstrate how to use data to inform the clinical care

[4] California Prison Health Care Receivership Corporation. Prison Medical Care System Reform: Plan of Action. May 2007. See www.cprinc.org/materials.htm.

[5] Wagner EH. Chronic disease management: What will it take to improve care for chronic illness? *Effective Clinical Practice*. 1998;1(1):2-4.

[6] See: How to Improve at www.ihi.org/IHI/Topics/Improvement/ImprovementMethods/HowToImprov.

process while orienting our providers and management staff to patient safety issues. The end result of this specific disease management initiative will be a heightened awareness of chronic disease management leading to the improved care of other conditions and the beginning of a safety culture.

The focus of the Asthma Initiative will be full-fledged, real-world practice redesign. The initiative leaders and ground-level clinicians must work together to address a multitude of issues to redesign the processes of care. For example, there is no mystery with regard to the need to assess the breathing capacity of asthma patients at each visit, but in the CDCR there is no agreement as to how to do so. Who will do the assessments, and how? Who will do the documentation, and how should verbal communication occur between patient and nurse, nurse and physician, physician and patient? What is the role of a respiratory therapist? How can we assure that information flows from on-site urgent care, off-site emergency department, or off-site consultant back to the yard clinic at the next appointment? More specifically, how should we address these questions now—in a system with chaotic medical records, pharmacies and laboratories, in which nurses and physicians have rarely worked together in teams, and in which custody and healthcare staff have often worked at cross purposes?

In order to achieve significant practice change and clinical improvement, the Asthma Initiative will involve headquarters, regional, and institutional staff, pharmacy/Maxor staff, and the external clinical and organizational change consultants. The local interdisciplinary teams will include provider, nursing, pharmacy, health records, and clerical staff. Each local interdisciplinary team will be lead by a clinical champion well-respected by his/her peers. The external clinical change experts will provide a change package, project management, and QI technical support. The project will follow established clinical guidelines. The pharmacy information system will identify patients using asthma medications. Data on medication usage will help stratify patients by severity.

The Asthma Initiative design will derive from the original Breakthrough Series Learning Collaboratives.[7] Adaptations of the collaborative model have proven to be effective and efficient.[8] The initiative will engage a small number of facilities initially, but staff from all 33 prisons should have the opportunity to participate in the initiative within a year. The initial Asthma Initiative sites will be selected based on local leadership capacity, organizational resource availability, pharmacy stability, and prior implementation of a pharmacy information system, all factors that will also contribute to success in the Asthma Initiative. The pilot sites chosen will have been exposed to QI tools and process redesign; therefore, these sites are most likely to embrace a QI collaborative pilot and the chronic care model.

Although the CDCR's 33 prisons often differ in their patient populations, organizational cultures, and clinical effectiveness, they share a core set of policies and procedures. Their limited heterogeneity and autonomy should allow faster dissemination of practice improvement than could be achieved among separate organizations.

As indicated above, in addition to addressing the specific problem of preventable deaths from asthma, the Asthma Initiative will provide critical training and information for the development and implementation of future QI initiatives. The Receiver will report to the Court on the progress of the Asthma Initiative and will report to the Court as new QI projects are undertaken.

c. *Description of the contracts necessary to implement the Project.* As part of its overall QI project, the Receiver plans to undertake contracts with organizations and consultants for technical assistance, project management, education, training, evaluation, and consultation for the design and implementation of QI, peer review, and leadership programs, including chronic care management, coordination of care, care process redesign, utilization of management, and incorporation of performance and outcome measurements for improvement and accountability.

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[7] The Breakthrough Series: IHI's Collaborative model for achieving breakthrough improvement. (2003) Boston, Massachusetts: Institute for Healthcare Improvement.

[8] Gould DA, et al. New York City Palliative Care Quality Improvement Collaborative. *Joint Commission Journal on Quality and Safety*. 2007: 33.307.

Specifically with respect to the Asthma Initiative, the Receiver has issued a Request for Proposal ("RFP") for technical assistance, education and training, and evaluation services. The selected contractor will be engaged to lead an interdisciplinary initiative with CDCR staff aimed at eliminating preventable patient deaths due to undiagnosed or uncontrolled asthma. A copy of the RFP is attached as Exhibit A to the Hill Decl. The Receiver has made it clear in the RFP that the contract cannot be awarded unless and until this Court approves the waiver of contracting procedures requested in this application.

E. Good Cause Exists To Waive State Contracting Law And Procedures For The Above-Referenced Projects To Ensure That Receiver Can Achieve His Court-Ordered Mandate To Provide Constitutional Medical Care To The State's Prisoners.

As set forth in Receiver's Master Application, the State Contracting Procedures are complex, cumbersome and extremely time-consuming and have had real, day-to-day and very serious adverse impacts on the CDCR's ability to provide adequate medical care in its prisons and on the Receiver's ability to implement necessary, timely, and inter-related remedial measures. The Receiver submits that, on their face, State Contracting Procedures are much too slow, much too bureaucratic and insufficiently nimble to accommodate the Receiver's efforts to bring the projects described to fruition or to make meaningful change to the prison healthcare system in a timely fashion.

This Court has found that the process by which State contracts are developed, reviewed, bid and awarded contributes to and exacerbates the numerous failings in the prison health care system. *See* FFCL at pp. 26-27. In the June 4, 2007 Order, the Court noted that "[t]here is no dispute that it would effectively stymie the Receiver's efforts to implement the projects identified in his [Master] Application in a timely manner if full compliance with the State's traditional contracting processes were required." June 4, 2007 Order at p. 3:18-20. Based on the Receiver's showing in the Master Application, the Court granted a waiver of State Contracting Procedures for those projects listed in Receiver's Master Application in the June 4, 2007 Order.

For the same reasons, the Court should grant this Supplemental Application No. 2. The projects at issue are critical to the systemic changes necessary to achieve constitutional medical

care in the State's prisons. Without a waiver of State Contracting Procedures, Receiver will be forced to spend months if not years obtaining vendors before these projects could move forward. Receiver submits that compliance with State Contracting Procedures will prevent him from accomplishing his mandate. Given what is at stake, Receiver does not have months or years to wait before implementing significant changes. A waiver is appropriate.

Based on the foregoing, the Receiver requests a waiver of State Contracting Procedures to the extent they would otherwise apply only to the projects and contracts described above, including but not limited to, the following:

Government Code ("Gov't Code") §§ 14825 – 14828 and State Contracting Manual ("SCM") §§ 5.10A, 5.75, 5.80 (governing advertisement of State contracts).

Public Contracts Code ("PCC") §§ 10290 – 10295, 10297, 10333, 10335, 10351, 10420 – 10425; Gov't Code § 14616; SCM §§ 4.00 – 4.11; (governing approval of contracts by Department of General Services ("DGS") and exemption from and consequences for failure to obtain DGS approval).

PCC §§ 10308, 10309, 10314; SCM vol. 2, State Administrative Manual ("SAM") §§ 3500 – 3696.3 (governing procurement of goods).

PCC §§ 6106, 10109 – 10126, 10129, 10140, 10141, 10180 – 10185, 10220, 10301 – 10306, 10340 – 10345, 10351, 10367, 10369; Gov't Code §§ 4525 – 4529.20, 4530-4535.3, 7070-7086, 7105-7118, 14835-14837; and Mil. & Veterans Code §§ 999-999.13; 2 CCR §§ 1195 – 1195.6; SCM §§ 5.00 – 6.40 and Management Memo ("MM") 03-10 (governing competitive bidding, required language in bid packages, Non-competitive Bid ("NCB") procedures, preferential selection criteria, contractor evaluations and notice, contract award and protest procedures for service, consulting service, construction project management and public works contracts).

PCC §§ 10314, 10346 (progress payment limitations).

Gov't Code § 13332.09 and MM 06-03 (governing vehicle purchases).

PCC §§ 12100 – 12113, 12120 – 12121, 12125 – 12128; SCM vol. 3; SAM §§ 4800 – 4989.3, 5200 – 5291 (governing procurement of IT, telecommunication and data processing

goods and services and applicable alternate protest procedures).

Gov't Code §§ 13332.10, 14660, 14669, 15853 (governing acquisition and leasing of real property).

Gov't Code §§ 13332.19, 15815 (governing plans, specifications and procedures for major capital projects).

PCC §§ 10365.5, 10371; SCM § 3.02.4 (governing restrictions on and approval for multiple contracts with same contractor).

F. The Receiver Will Comply With The Substitute Bidding Process Procedures Approved By The Court In Its June 4, 2007 Order, Which Comply With The Essential Goals Of State Contracting Procedures.

As discussed above, in approving the Master Application, the Court approved three bidding processes: Expedited Formal Bidding; Urgent Informal Bidding; and Sole Source Bidding. June 4, 2007 Order at p. 6:18:8:23. For the projects described in this supplemental waiver application, as indicated above, the Receiver proposes to follow the bidding procedures approved by the Court in the June 4, 2007 Order. The Receiver submits that the streamlined processes approved by the Court will permit him to move expeditiously to accomplish his mandate while at the same time providing sufficient safeguards to the public and the public fisc in the contracting process. He seeks approval of those bidding procedures for the projects subject to this application.

In addition, in his Master Application, the Receiver noted that State law requires provisions and certifications that address particular public policies, e.g., antidiscrimination laws. As with contracts to be entered into pursuant to the June 4, 2007 Order, Receiver proposes to publish the provisions requiring contractor certifications of compliance on his website and include a single representation in the contracts he awards to the effect that the contractor has read, and attests that he/she/it is in compliance with, the required provisions. Alternatively, the Receiver may simply incorporate into its agreements standard contractor certification provisions promulgated by the California Department of General Services, and which are available online. Receiver seeks authorization to use either procedure with respect to the projects described above at his discretion.

CONCLUSION

For all the foregoing reasons, therefore, the Receiver respectfully requests an order (1) waiving any requirement that the Receiver comply with State Contracting Procedures only with respect to the contracts necessary to complete the Receiver's planned Quality Improvement projects including, but not limited to, the Asthma Initiative; and, (2) approving the same substituted notice, bidding and award procedures approved by the Court in its June 4, 2007 Order for such contracts.

Dated: November 20, 2007

FUTTERMAN & DUPREE LLP

By: /s/
Martin H. Dodd
Attorneys for Receiver Robert Sillen

CERTIFICATE OF SERVICE

The undersigned hereby certifies as follows:

I am an employee of the law firm of Futterman & Dupree LLP, 160 Sansome Street, 17th Floor, San Francisco, CA 94104. I am over the age of 18 and not a party to the within action.

I am readily familiar with the business practice of Futterman & Dupree, LLP for the collection and processing of correspondence.

On November 20, 2007 I served a copy of the following document(s):

RECEIVER'S SUPPLEMENTAL APPLICATION NO. 2 FOR ORDER WAIVING STATE CONTRACTING STATUTES, REGULATIONS AND PROCEDURES, APPROVING RECEIVER'S SUBSTITUTE PROCEDURE FOR BIDDING AND AWARD OF CONTRACTS

by placing true copies thereof enclosed in sealed envelopes, for collection and service pursuant to the ordinary business practice of this office in the manner and/or manners described below to each of the parties herein and addressed as follows:

___ BY HAND DELIVERY: I caused such envelope(s) to be served by hand to the address(es) designated below.

_X_ BY MAIL: I caused such envelope(s) to be deposited in the mail at my business address, addressed to the addressee(s) designated. I am readily familiar with Futterman & Dupree's practice for collection and processing of correspondence and pleadings for mailing. It is deposited with the United States Postal Service on that same day in the ordinary course of business.

___ BY OVERNIGHT COURIER SERVICE: I caused such envelope(s) to be delivered via overnight courier service to the addressee(s) designated.

___ BY FACSIMILE: I caused said document(s) to be transmitted to the telephone number(s) of the addressee(s) designated.

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Dated: November 20, 2007

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